

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 JEFFERSON BUNING,
5 Petitioner,

6 vs.

2:15-cv-01176-APG-VCF
ORDER

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8 LORETTA LYNCH, Attorney General; JEH
9 JOHNSON, Secretary of the Department of
10 Homeland Security; LEON RODRIGUEZ,
11 Director of the United States Citizenship and
Immigration Services,
12 Respondents.

13 This matter involves Jefferson Buning v. Loretta Lynch, Attorney General, Jeh Johnson, Secretary
14 of the Department of Homeland Security and Leon Rodriguez, Director of the United States Citizenship
15 and Immigration Services, for appeal of USCIS' actions in denying Petitioner's N400 naturalization
16 application. (*See* Petition (#1at 2¹). Before the court is Petitioner's Motion to Extend Time for Service
17 Pursuant to FRCP 4(m). (#7). The period in which to serve Respondent Jeh Johnson, Secretary of the
18 Department of Homeland Security, expired on October 17, 2015. (#1). Petitioner's motion was filed
19 October 15, 2015, prior to the expiration.

20 **DISCUSSION**

21 Petitioner's motion presents the question of whether Petitioner may have additional time to serve
22 Respondent Jeh Johnson, Secretary of the Department of Homeland Security. The motion is granted as
23 discussed below.
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¹ Parenthetical citations refer to the court's docket.

1 **A. Petitioner’s Motion to Extend Time to Serve Jeh Johnson, Secretary of the Department**
 2 **of Homeland Security, Pursuant to FRCP 4(m) is Granted.**

3 Courts have broad discretion to extend time for service under Rule 4(m). *Efaw v. Williams*, 473
 4 F.3d 1038, 1041 (9th Cir. 2003). The Supreme Court has stated that the 120–day time period for service
 5 contained in Rule 4(m) “operates not as an outer limit subject to reduction, but as an irreducible
 6 allowance.” *Henderson v. United States*, 517 U.S. 654, 661 (1996). “On its face, Rule 4(m) does not tie
 7 the hands of the district court after the 120–day period has expired. Rather, Rule 4(m) explicitly permits
 8 a district court to grant an extension of time to serve the complaint after that 120–day period.” *Mann v.*
 9 *American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003). The Advisory Committee Notes to Rule 4(m)
 10 state that the rule “explicitly provides that the court shall allow additional time if there is good cause for
 11 the plaintiff’s failure to effect service in the prescribed 120 days, and authorizes the court to relieve a
 12 plaintiff of the consequences of an application of [Rule 4(m)] even if there is no good cause shown.” *See*
 13 *FED. R. CIV. P. 4(m)*, Advisory Committee Notes, 1993 Amendments.

14 Generally, “good cause” is equated with diligence. *See* WRIGHT & MILLER, FEDERAL PRACTICE
 15 AND PROCEDURE: CIVIL 3D § 1337. In the Ninth Circuit, a showing of good cause requires more than
 16 simple inadvertence, mistake of counsel, or ignorance of the rules. *See National Union Fire Ins. Co. v.*
 17 *Monroe*, No. 10–cv–0385, 2011 WL 383807, at *1 (D. Nev. Feb. 2, 2011). “At a minimum, good cause
 18 means excusable neglect. A plaintiff may also be required to show the following: (a) the party to be served
 19 personally received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) the
 20 plaintiff would be severely prejudiced if his complaint were dismissed.” *Boudette v. Barnette*, 923 F.2d
 21 754, 756 (9th Cir.1991).

22 Petitioner has satisfied this standard. Petitioner has attempted to serve an authorized individual at
 23 the Department of Homeland Security and requires additional time to obtain proper authorization. Here,
 24 Petitioner has shown good cause and Defendants would suffer no prejudice. Accordingly, the court grants
 25 Petitioner an additional sixty days from the expiration deadline, up to and including December 16, 2015

1 to effectuate service of the Petition and Summons on Jeh Johnson, Secretary of the Department of
2 Homeland Security.

3 ACCORDINGLY, and for good cause shown,

4 IT IS ORDERED that Petitioner's Motion to Extend Time for Service Pursuant to FRCP 4(m).
5 (#7) is GRANTED. Petitioner has an additional 60 days from the expiration deadline, up to and including
6 December 16, 2015, to perfect service on Defendant Jeh Johnson, Secretary of the Department of
7 Homeland Security.

8 IT IS SO ORDERED.

9 DATED this 5th day of November, 2015.

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CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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